

BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2009-311-C

IN RE:

Genesis Telecommunications, LLC,
Complainant, v. United Telephone of
the Carolinas d/b/a CenturyLink (f/k/a
Embarq), Defendant/Respondent

**PETITION FOR REHEARING OR
RECONSIDERATION**

Genesis Telecommunications, LLC (“Genesis” or “Petitioner”), pursuant to S.C. Code Ann., §§58-9-1200 and 1-23-10, et seq. (1976, as amended), Rule 59, SCRCP and the applicable rules and regulations of the South Carolina Public Service Commission (the "Commission"), requests that the Commission reconsider Order No. 2010-542 served on August 12, 2010, in the above-referenced Docket. In support of its petition, Petitioner states as follows:

STANDARD FOR A PETITION FOR REHEARING

According to Rule 221(a) of the South Carolina Appellate Court Rules, a properly drawn petition for rehearing must state “the points supposed to have been overlooked or misapprehended by the court.” See Kennedy v. South Carolina Retirement System, 349 S.C. 531, 564 S.E.2d 322 (2001); and James A. Atkins, 16 S.C. Jur. Appeal and Error § 147 (2007). “The purpose of such a petition (for rehearing) is to aid the court in deciding correctly a case heard by it.” Arnold v. Carolina Power & Light Co., 168 S.C. 163, 167 S.E. 234 (1933).

ARGUMENT

It is patently obvious that Genesis did not draft its current ICA (and the agreement in effect during the relevant time period in this Docket) with CenturyLink, as Genesis adopted an ICA already approved by this Commission. The Commission took judicial notice of this in the Order by referencing the fact that the Genesis ICA was an adoption of the Bullseye ICA. (Order, p.1, fn. 1). Therefore, no evidence was necessary to establish this point. Accordingly, either the plain language of the ICAs (and the Rule) require the Commission to enforce its terms, or the ambiguity in the ICAs must be construed against CenturyLink.

The Commission concludes that “bytes” means “bits” even though CenturyLink’s own witness testified that the two terms are different. CenturyLink witness Showers conceded, in response to a question from Commissioner Mitchell, that the terms “bit” and “byte” are “distinctly different. We know that much.” (Tr. p. 79, ll. 15-16). As such, the Commission has improperly reformed the ICA in substituting “bits” for the plain language “bytes”. “Bit” cannot be substituted for “byte” in the ICA’s definition of “DS-1 Loop” based on the faulty premise that the two terms are “interchangeable.” Genesis offered the only definition for “byte” that does not alchemize the term into something it clearly is not.

Nor does the TRO Order provide support for the Commission’s conclusions. The Commission (Order at p. 4, fn. 2) cites one footnote (of two thousand, four hundred and forty-five footnotes) in the 485-page TRO Order in an attempt to support the proposition that “bytes means bits.” However, that very TRO Order promulgating the Rule clearly

and plainly defines a DS1 in terms of megabytes, not megabits. (TRO Order, Appendix B- Final Rules at p. 14). The Agreement therefore incorporated the Rule exactly how it was written in the TRO Order and promulgated in the Code of Federal Regulations.

Moreover, there is no support for the Order's conclusion (p. 11) that the ICAs reference documents defining a "DS1 Loop" in terms of megabits. Section 45.8.7 of Part E of the ICAs does not incorporate the ANSI Standard claimed by CenturyLink. That provision in the ICAs reads: "Parties agree to abide by national standards as developed by ANSI, i.e., Committee TIE1.4 group defining standards for loop technology." CenturyLink could not testify that the document provided as Hearing Exhibit Two (CenturyLink Exhibit RJS-1) was a "standard developed by the Committee TIE1.4 group defining standards for loop technology." As a result, at the close of the hearing, this Commission had no evidence or authority before it that ANSI has issued a standard for a DS-1 Loop applicable to the ICAs, or that any such standard was incorporated into the ICAs. It is an error of law to conclude otherwise.

Recognizing that Composite Hearing Exhibit Two was not a standard created by the "Committee TIE1.4 group defining standards for loop technology," CenturyLink supplied a "Late-Filed Exhibit" to the Commission. Putting aside the procedural irregularities of this filing, the document is inscrutable at best. CenturyLink did not argue, and the Order did not explain any connection between this document and the issues present in this case. Neither the term "TIE1.4" nor "DS-1" appear even once in this document. In any event, this document does not change the fact that the ICAs clearly and plainly do not incorporate by reference any ANSI standard that defines bytes as bits.

WHEREFORE, having fully set forth its grounds for this petition, Petitioner respectfully requests that the Commission reconsider Order No. 2010-542 and grant such other relief as the Commission deems just and proper.

Respectfully submitted,

s/John J. Pringle, Jr
John J. Pringle, Jr.
Ellis, Lawhorne & Sims, P.A.
1501 Main Street, 5th Floor
P.O. Box 2285
Columbia, South Carolina 29202
Telephone: (803) 343-1270
Facsimile: (803) 799-8479
jpringle@ellislawhorne.com

Attorneys for Petitioner

Columbia, South Carolina
August 27, 2010

**BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
DOCKET NO. 2009-311-C**

IN RE:

Genesis Telecommunications, LLC,
Complainant, v. United Telephone of
the Carolinas d/b/a CenturyLink (f/k/a
Embarq), Defendant/Respondent

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day, one (1) copy of the **Petition for Rehearing or Reconsideration** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

VIA ELECTRONIC MAIL SERVICE

Nannette S. Edwards, Esquire
Office of Regulatory Staff
Legal Department
PO Box 11263
Columbia SC 29211

VIA ELECTRONIC MAIL SERVICE

Scott Elliott, Esquire
Elliott & Elliott, PA
721 Olive Street
Columbia SC 29205

VIA ELECTRONIC MAIL SERVICE

Susan S. Masterton, Counsel
CenturyLink
315 South Calhoun St.
Suite 500
Tallahassee FL 32301

s/ Carol Roof
Carol Roof

August 27, 2010
Columbia, South Carolina